

1 COUGHLIN STOIA GELLER  
2 RUDMAN & ROBBINS LLP  
3 BONNY E. SWEENEY (176174)  
4 GREGORY S. WESTON (239944)  
5 655 West Broadway, Suite 1900  
6 San Diego, CA 92101  
7 Telephone: 619/231-1058  
8 619/231-7423 (fax)  
9 bonnys@csgrr.com  
10 gweston@csgrr.com

11 THE KATRIEL LAW FIRM  
12 ROY A. KATRIEL (*pro hac vice*)  
13 1101 30th Street, N.W., Suite 500  
14 Washington, DC 20007  
15 Telephone: 202/625-4342  
16 202/330-5593 (fax)  
17 rak@katriellaw.com

18 Co-Lead Counsel for Plaintiffs

19 [Additional counsel appear on signature page.]

20  
21 UNITED STATES DISTRICT COURT  
22  
23 NORTHERN DISTRICT OF CALIFORNIA

24 SAN JOSE DIVISION

25 THE APPLE IPOD ITUNES ANTI-TRUST ) Lead Case No. C-05-00037-JW(RS)  
26 LITIGATION )  
27 \_\_\_\_\_ )  
28 )  
29 This Document Relates To: )  
30 )  
31 ALL ACTIONS. )  
32 \_\_\_\_\_ )  
33 )  
34 )  
35 )  
36 )  
37 )  
38 )  
39 )  
40 )  
41 )  
42 )  
43 )  
44 )  
45 )  
46 )  
47 )  
48 )  
49 )  
50 )  
51 )  
52 )  
53 )  
54 )  
55 )  
56 )  
57 )  
58 )  
59 )  
60 )  
61 )  
62 )  
63 )  
64 )  
65 )  
66 )  
67 )  
68 )  
69 )  
70 )  
71 )  
72 )  
73 )  
74 )  
75 )  
76 )  
77 )  
78 )  
79 )  
80 )  
81 )  
82 )  
83 )  
84 )  
85 )  
86 )  
87 )  
88 )  
89 )  
90 )  
91 )  
92 )  
93 )  
94 )  
95 )  
96 )  
97 )  
98 )  
99 )  
100 )  
101 )  
102 )  
103 )  
104 )  
105 )  
106 )  
107 )  
108 )  
109 )  
110 )  
111 )  
112 )  
113 )  
114 )  
115 )  
116 )  
117 )  
118 )  
119 )  
120 )  
121 )  
122 )  
123 )  
124 )  
125 )  
126 )  
127 )  
128 )  
129 )  
130 )  
131 )  
132 )  
133 )  
134 )  
135 )  
136 )  
137 )  
138 )  
139 )  
140 )  
141 )  
142 )  
143 )  
144 )  
145 )  
146 )  
147 )  
148 )  
149 )  
150 )  
151 )  
152 )  
153 )  
154 )  
155 )  
156 )  
157 )  
158 )  
159 )  
160 )  
161 )  
162 )  
163 )  
164 )  
165 )  
166 )  
167 )  
168 )  
169 )  
170 )  
171 )  
172 )  
173 )  
174 )  
175 )  
176 )  
177 )  
178 )  
179 )  
180 )  
181 )  
182 )  
183 )  
184 )  
185 )  
186 )  
187 )  
188 )  
189 )  
190 )  
191 )  
192 )  
193 )  
194 )  
195 )  
196 )  
197 )  
198 )  
199 )  
200 )  
201 )  
202 )  
203 )  
204 )  
205 )  
206 )  
207 )  
208 )  
209 )  
210 )  
211 )  
212 )  
213 )  
214 )  
215 )  
216 )  
217 )  
218 )  
219 )  
220 )  
221 )  
222 )  
223 )  
224 )  
225 )  
226 )  
227 )  
228 )  
229 )  
230 )  
231 )  
232 )  
233 )  
234 )  
235 )  
236 )  
237 )  
238 )  
239 )  
240 )  
241 )  
242 )  
243 )  
244 )  
245 )  
246 )  
247 )  
248 )  
249 )  
250 )  
251 )  
252 )  
253 )  
254 )  
255 )  
256 )  
257 )  
258 )  
259 )  
260 )  
261 )  
262 )  
263 )  
264 )  
265 )  
266 )  
267 )  
268 )  
269 )  
270 )  
271 )  
272 )  
273 )  
274 )  
275 )  
276 )  
277 )  
278 )  
279 )  
280 )  
281 )  
282 )  
283 )  
284 )  
285 )  
286 )  
287 )  
288 )  
289 )  
290 )  
291 )  
292 )  
293 )  
294 )  
295 )  
296 )  
297 )  
298 )  
299 )  
300 )  
301 )  
302 )  
303 )  
304 )  
305 )  
306 )  
307 )  
308 )  
309 )  
310 )  
311 )  
312 )  
313 )  
314 )  
315 )  
316 )  
317 )  
318 )  
319 )  
320 )  
321 )  
322 )  
323 )  
324 )  
325 )  
326 )  
327 )  
328 )  
329 )  
330 )  
331 )  
332 )  
333 )  
334 )  
335 )  
336 )  
337 )  
338 )  
339 )  
340 )  
341 )  
342 )  
343 )  
344 )  
345 )  
346 )  
347 )  
348 )  
349 )  
350 )  
351 )  
352 )  
353 )  
354 )  
355 )  
356 )  
357 )  
358 )  
359 )  
360 )  
361 )  
362 )  
363 )  
364 )  
365 )  
366 )  
367 )  
368 )  
369 )  
370 )  
371 )  
372 )  
373 )  
374 )  
375 )  
376 )  
377 )  
378 )  
379 )  
380 )  
381 )  
382 )  
383 )  
384 )  
385 )  
386 )  
387 )  
388 )  
389 )  
390 )  
391 )  
392 )  
393 )  
394 )  
395 )  
396 )  
397 )  
398 )  
399 )  
400 )  
401 )  
402 )  
403 )  
404 )  
405 )  
406 )  
407 )  
408 )  
409 )  
410 )  
411 )  
412 )  
413 )  
414 )  
415 )  
416 )  
417 )  
418 )  
419 )  
420 )  
421 )  
422 )  
423 )  
424 )  
425 )  
426 )  
427 )  
428 )  
429 )  
430 )  
431 )  
432 )  
433 )  
434 )  
435 )  
436 )  
437 )  
438 )  
439 )  
440 )  
441 )  
442 )  
443 )  
444 )  
445 )  
446 )  
447 )  
448 )  
449 )  
450 )  
451 )  
452 )  
453 )  
454 )  
455 )  
456 )  
457 )  
458 )  
459 )  
460 )  
461 )  
462 )  
463 )  
464 )  
465 )  
466 )  
467 )  
468 )  
469 )  
470 )  
471 )  
472 )  
473 )  
474 )  
475 )  
476 )  
477 )  
478 )  
479 )  
480 )  
481 )  
482 )  
483 )  
484 )  
485 )  
486 )  
487 )  
488 )  
489 )  
490 )  
491 )  
492 )  
493 )  
494 )  
495 )  
496 )  
497 )  
498 )  
499 )  
500 )  
501 )  
502 )  
503 )  
504 )  
505 )  
506 )  
507 )  
508 )  
509 )  
510 )  
511 )  
512 )  
513 )  
514 )  
515 )  
516 )  
517 )  
518 )  
519 )  
520 )  
521 )  
522 )  
523 )  
524 )  
525 )  
526 )  
527 )  
528 )  
529 )  
530 )  
531 )  
532 )  
533 )  
534 )  
535 )  
536 )  
537 )  
538 )  
539 )  
540 )  
541 )  
542 )  
543 )  
544 )  
545 )  
546 )  
547 )  
548 )  
549 )  
550 )  
551 )  
552 )  
553 )  
554 )  
555 )  
556 )  
557 )  
558 )  
559 )  
560 )  
561 )  
562 )  
563 )  
564 )  
565 )  
566 )  
567 )  
568 )  
569 )  
570 )  
571 )  
572 )  
573 )  
574 )  
575 )  
576 )  
577 )  
578 )  
579 )  
580 )  
581 )  
582 )  
583 )  
584 )  
585 )  
586 )  
587 )  
588 )  
589 )  
590 )  
591 )  
592 )  
593 )  
594 )  
595 )  
596 )  
597 )  
598 )  
599 )  
600 )  
601 )  
602 )  
603 )  
604 )  
605 )  
606 )  
607 )  
608 )  
609 )  
610 )  
611 )  
612 )  
613 )  
614 )  
615 )  
616 )  
617 )  
618 )  
619 )  
620 )  
621 )  
622 )  
623 )  
624 )  
625 )  
626 )  
627 )  
628 )  
629 )  
630 )  
631 )  
632 )  
633 )  
634 )  
635 )  
636 )  
637 )  
638 )  
639 )  
640 )  
641 )  
642 )  
643 )  
644 )  
645 )  
646 )  
647 )  
648 )  
649 )  
650 )  
651 )  
652 )  
653 )  
654 )  
655 )  
656 )  
657 )  
658 )  
659 )  
660 )  
661 )  
662 )  
663 )  
664 )  
665 )  
666 )  
667 )  
668 )  
669 )  
670 )  
671 )  
672 )  
673 )  
674 )  
675 )  
676 )  
677 )  
678 )  
679 )  
680 )  
681 )  
682 )  
683 )  
684 )  
685 )  
686 )  
687 )  
688 )  
689 )  
690 )  
691 )  
692 )  
693 )  
694 )  
695 )  
696 )  
697 )  
698 )  
699 )  
700 )  
701 )  
702 )  
703 )  
704 )  
705 )  
706 )  
707 )  
708 )  
709 )  
710 )  
711 )  
712 )  
713 )  
714 )  
715 )  
716 )  
717 )  
718 )  
719 )  
720 )  
721 )  
722 )  
723 )  
724 )  
725 )  
726 )  
727 )  
728 )  
729 )  
730 )  
731 )  
732 )  
733 )  
734 )  
735 )  
736 )  
737 )  
738 )  
739 )  
740 )  
741 )  
742 )  
743 )  
744 )  
745 )  
746 )  
747 )  
748 )  
749 )  
750 )  
751 )  
752 )  
753 )  
754 )  
755 )  
756 )  
757 )  
758 )  
759 )  
760 )  
761 )  
762 )  
763 )  
764 )  
765 )  
766 )  
767 )  
768 )  
769 )  
770 )  
771 )  
772 )  
773 )  
774 )  
775 )  
776 )  
777 )  
778 )  
779 )  
780 )  
781 )  
782 )  
783 )  
784 )  
785 )  
786 )  
787 )  
788 )  
789 )  
790 )  
791 )  
792 )  
793 )  
794 )  
795 )  
796 )  
797 )  
798 )  
799 )  
800 )  
801 )  
802 )  
803 )  
804 )  
805 )  
806 )  
807 )  
808 )  
809 )  
810 )  
811 )  
812 )  
813 )  
814 )  
815 )  
816 )  
817 )  
818 )  
819 )  
820 )  
821 )  
822 )  
823 )  
824 )  
825 )  
826 )  
827 )  
828 )  
829 )  
830 )  
831 )  
832 )  
833 )  
834 )  
835 )  
836 )  
837 )  
838 )  
839 )  
840 )  
841 )  
842 )  
843 )  
844 )  
845 )  
846 )  
847 )  
848 )  
849 )  
850 )  
851 )  
852 )  
853 )  
854 )  
855 )  
856 )  
857 )  
858 )  
859 )  
860 )  
861 )  
862 )  
863 )  
864 )  
865 )  
866 )  
867 )  
868 )  
869 )  
870 )  
871 )  
872 )  
873 )  
874 )  
875 )  
876 )  
877 )  
878 )  
879 )  
880 )  
881 )  
882 )  
883 )  
884 )  
885 )  
886 )  
887 )  
888 )  
889 )  
890 )  
891 )  
892 )  
893 )  
894 )  
895 )  
896 )  
897 )  
898 )  
899 )  
900 )  
901 )  
902 )  
903 )  
904 )  
905 )  
906 )  
907 )  
908 )  
909 )  
910 )  
911 )  
912 )  
913 )  
914 )  
915 )  
916 )  
917 )  
918 )  
919 )  
920 )  
921 )  
922 )  
923 )  
924 )  
925 )  
926 )  
927 )  
928 )  
929 )  
930 )  
931 )  
932 )  
933 )  
934 )  
935 )  
936 )  
937 )  
938 )  
939 )  
940 )  
941 )  
942 )  
943 )  
944 )  
945 )  
946 )  
947 )  
948 )  
949 )  
950 )  
951 )  
952 )  
953 )  
954 )  
955 )  
956 )  
957 )  
958 )  
959 )  
960 )  
961 )  
962 )  
963 )  
964 )  
965 )  
966 )  
967 )  
968 )  
969 )  
970 )  
971 )  
972 )  
973 )  
974 )  
975 )  
976 )  
977 )  
978 )  
979 )  
980 )  
981 )  
982 )  
983 )  
984 )  
985 )  
986 )  
987 )  
988 )  
989 )  
990 )  
991 )  
992 )  
993 )  
994 )  
995 )  
996 )  
997 )  
998 )  
999 )  
1000 )  
1001 )  
1002 )  
1003 )  
1004 )  
1005 )  
1006 )  
1007 )  
1008 )  
1009 )  
1010 )  
1011 )  
1012 )  
1013 )  
1014 )  
1015 )  
1016 )  
1017 )  
1018 )  
1019 )  
1020 )  
1021 )  
1022 )  
1023 )  
1024 )  
1025 )  
1026 )  
1027 )  
1028 )  
1029 )  
1030 )  
1031 )  
1032 )  
1033 )  
1034 )  
1035 )  
1036 )  
1037 )  
1038 )  
1039 )  
1040 )  
1041 )  
1042 )  
1043 )  
1044 )  
1045 )  
1046 )  
1047 )  
1048 )  
1049 )  
1050 )  
1051 )  
1052 )  
1053 )  
1054 )  
1055 )  
1056 )  
1057 )  
1058 )  
1059 )  
1060 )  
1061 )  
1062 )  
1063 )  
1064 )  
1065 )  
1066 )  
1067 )  
1068 )  
1069 )  
1070 )  
1071 )  
1072 )  
1073 )  
1074 )  
1075 )  
1076 )  
1077 )  
1078 )  
1079 )  
1080 )  
1081 )  
1082 )  
1083 )  
1084 )  
1085 )  
1086 )  
1087 )  
1088 )  
1089 )  
1090 )  
1091 )  
1092 )  
1093 )  
1094 )  
1095 )  
1096 )  
1097 )  
1098 )  
1099 )  
1100 )  
1101 )  
1102 )  
1103 )  
1104 )  
1105 )  
1106 )  
1107 )  
1108 )  
1109 )  
1110 )  
1111 )  
1112 )  
1113 )  
1114 )  
1115 )  
1116 )  
1117 )  
1118 )  
1119 )  
1120 )  
1121 )  
1122 )  
1123 )  
1124 )  
1125 )  
1126 )  
1127 )  
1128 )  
1129 )  
1130 )  
1131 )  
1132 )  
1133 )  
1134 )  
1135 )  
1136 )  
1137 )  
1138 )  
1139 )  
1140 )  
1141 )  
1142 )  
1143 )  
1144 )  
1145 )  
1146 )  
1147 )  
1148 )  
1149 )  
1150 )  
1151 )  
1152 )  
1153 )  
1154 )  
1155 )  
1156 )  
1157 )  
1158 )  
1159 )  
1160 )  
1161 )  
1162 )  
1163 )  
1164 )  
1165 )  
1166 )  
1167 )  
1168 )  
1169 )  
1170 )  
1171 )  
1172 )  
1173 )  
1174 )  
1175 )  
1176 )  
1177 )  
1178 )  
1179 )  
1180 )  
1181 )  
1182 )  
1183 )  
1184 )  
1185 )  
1186 )  
1187 )  
1188 )  
1189 )  
1190 )  
1191 )  
1192 )  
1193 )  
1194 )  
1195 )  
1196 )  
1197 )  
1198 )  
1199 )  
1200 )  
1201 )  
1202 )  
1203 )  
1204 )  
1205 )  
1206 )  
1207 )  
1208 )  
1209 )  
1210 )  
1211 )  
1212 )  
1213 )  
1214 )  
1215 )  
1216 )  
1217 )  
1218 )  
1219 )  
1220 )  
1221 )  
1222 )  
1223 )  
1224 )  
1225 )  
1226 )  
1227 )  
1228 )  
1229 )  
1230 )  
1231 )  
1232 )  
1233 )  
1234 )  
1235 )  
1236 )  
1237 )  
1238 )  
1239 )  
1240 )  
1241 )  
1242 )  
1243 )  
1244 )  
1245 )  
1246 )  
1247 )  
1248 )  
1249 )  
1250 )  
1251 )  
1252 )  
1253 )  
1254 )  
1255 )  
1256 )  
1257 )  
1258 )  
1259 )  
1260 )  
1261 )  
1262 )  
1263 )  
1264 )  
1265 )  
1266 )  
1267 )  
1268 )  
1269 )  
1270 )  
1271 )  
1272 )  
1273 )  
1274 )  
1275 )  
1276 )  
1277 )  
1278 )  
1279 )  
1280 )  
1281 )  
1282 )  
1283 )  
1284 )  
1285 )  
1286 )  
1287 )  
1288 )  
1289 )  
1290 )  
1291 )  
1292 )  
1293 )  
1294 )  
1295 )  
1296 )  
1297 )  
1298 )  
1299 )  
1300 )  
1301 )  
1302 )  
1303 )  
1304 )  
1305 )  
1306 )  
1307 )  
1308 )  
1309 )  
1310 )  
1311 )  
1312 )  
1313 )  
1314 )  
1315 )  
1316 )  
1317 )  
1318 )  
1319 )  
1320 )  
1321 )  
1322 )  
1323 )  
1324 )  
1325 )  
1326 )  
1327 )  
1328 )  
1329 )  
1330 )  
1331 )  
1332 )  
1333 )  
1334 )  
1335 )  
1336 )  
1337 )  
1338 )  
1339 )  
1340 )  
1341 )  
1342 )  
1343 )  
1344 )  
1345 )  
1346 )  
1347 )  
1348 )  
1349 )  
1350 )  
1351 )  
1352 )  
1353 )  
1354 )  
1355 )  
1356 )  
1357 )  
1358 )  
1359 )  
1360 )  
1361 )  
1362 )  
1363 )  
1364 )  
1365 )  
1366 )  
1367 )  
1368 )  
1369 )  
1370 )  
1371 )  
1372 )  
1373 )  
1374 )  
1375 )  
1376 )  
1377 )  
1378 )  
1379 )  
1380 )  
1381 )  
1382 )  
1383 )  
1384 )  
1385 )  
1386 )  
1387 )  
1388 )  
1389 )  
1390 )  
1391 )  
1392 )  
1393 )  
1394 )  
1395 )  
1396 )  
1397 )  
1398 )  
1399 )  
1400 )  
1401 )  
1402 )  
1403 )  
1404 )  
1405 )  
1406 )  
1407 )  
1408 )  
1409 )  
1410 )  
1411 )  
1412 )  
1413 )  
1414 )  
1415 )  
1416 )  
1417 )  
1418 )  
1419 )  
1420 )  
1421 )  
1422 )  
1423 )  
1424 )  
1425 )  
1426 )  
1427 )  
1428 )  
1429 )  
1430 )  
1431 )  
1432 )  
1433 )  
1434 )  
1435 )  
1436 )  
1437 )  
1438 )  
1439 )  
1440 )  
1441 )  
1442 )  
1443 )  
1444 )  
1445 )  
1446 )  
1447 )  
1448 )  
1449 )  
1450 )  
1451 )  
1452 )  
1453 )  
1454 )  
1455 )  
1456 )  
1457 )  
1458 )  
1459 )  
1460 )  
1461 )  
1462 )  
1463 )  
1464 )  
1465 )  
1466 )  
1467 )  
1468 )  
1469 )  
1470 )  
1471 )  
1472 )  
1473 )  
1474 )  
1475 )  
1476 )  
1477 )  
1478 )  
1479 )  
1480 )  
1481 )  
1482 )  
1483 )  
1484 )  
1485 )  
1486 )  
1487 )  
1488 )  
1489 )  
1490 )  
1491 )  
1492 )  
1493 )  
1494 )  
1495 )  
1496 )

1   **I. INTRODUCTION**

2       In Apple's Opposition to Motion to Compel Production of Documents "Relating to Class  
3       Certification," filed December 21, 2007 ("Opposition"), Apple fails to rebut Plaintiffs' showing that  
4       the information sought by this motion is relevant to class certification, and fails to demonstrate that  
5       production of the data would impose anything other than a *de minimis* burden on Apple. For these  
6       reasons, this Court should grant Plaintiffs' motion to compel.

7   **II. THE FINANCIAL DATA PLAINTIFFS SEEK IN REQUESTS FOR  
8       PRODUCTION NO. 10 AND NO. 19 ARE RELEVANT TO CLASS  
9       CERTIFICATION**

10      As Plaintiffs demonstrated in their opening papers, profit and cost data are relevant to their  
11      class certification motion, and are routinely used in antitrust class certification expert reports.<sup>1</sup>

12      In *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation* ("DRAM Antitrust"),  
13      for example, Judge Hamilton, in certifying the class, found that "the three damage methodologies  
14      identified by [Plaintiffs' economist] – have been upheld by numerous courts." *In re Dynamic*  
15      *Random Access Memory Antitrust Litig.*, No. M 02-1486 PJH, 2006 U.S. Dist. LEXIS 39841, at \*46  
16      (N.D. Cal. June 5, 2006). One of those three widely recognized methodologies for proving damages  
17      – the "operating margin approach" – requires examination of the defendant's revenue and cost data.  
18      See *id.*, at \*48. While plaintiffs are not required at the class certification stage to conduct a full-  
19      blown damage analysis, they must advance a "plausible methodology" and demonstrate that the  
20      evidence they intend to present at trial will rely upon common proof. *Id.*, citing *In re Bulk*  
21      *[Extruded]Graphite Prod. Antitrust Litig.*, Civ. No. 02-6030 (WHW), 2006 U.S. Dist. LEXIS 16619,  
22      at \*44 (D.N.J. Apr. 4, 2006); *In re Industrial Diamonds Antitrust Litig.*, 167 F.R.D. 374, 384  
23      (S.D.N.Y. 1996).

24      <sup>1</sup>     Defendant devotes much of its Opposition to rehashing its assertion that Plaintiffs' theory is  
25      "unprecedented" and contrary to the spirit of the antitrust laws. Opposition at 1:23-2:18. Though  
26      Plaintiffs disagree with most of the statements in this portion of Defendant's Opposition and could  
27      reply in detail, it more than suffices to note that Defendant's rehashed arguments have twice already  
28      been rejected by Judge Ware. See *Slattery v. Apple Computer, Inc.*, No. C 05-00037 JW, 2005 WL  
29      2204981 (N.D. Cal. Sept. 9, 2005); *Tucker v. Apple Computer, Inc.*, 493 F. Supp. 2d 1090 (N.D. Cal.  
30      2006).

1 Plaintiffs have no data available to determine whether the operating margin methodology  
2 could be used in this case to estimate damages.<sup>2</sup> The cost and revenue information is solely in  
3 Apple's hands.

4 Request No. 19 narrowly seeks the data necessary to use the operating margin methodology  
5 for estimating damages:

6 All Documents necessary to allow the calculation for each quarter since the  
7 introduction of the iPod for each model that iPod has sold, the number of iPods that  
have been purchased, Apple's total revenue from the sale of each iPod model and  
8 **Apple's Cost of Manufacturing** and cost of sale for each iPod model.

9 Request No. 19 (emphasis added). For these reasons, the requested data are relevant to class  
certification and should be produced.

10 Defendant states that Plaintiffs "neglect to mention" that it produced "sales information."  
11 Opposition at 4:20-24. However, Apple has steadfastly refused to produce any **iPod cost data**, and  
12 Plaintiffs seek both cost and sales data for the various iPod models.

13 Apple also argues that Plaintiffs' motion should be denied because a Plaintiff in one of the  
14 two consolidated cases filed a motion for class certification without the benefit of the data Plaintiffs  
15 now seek through this motion. This argument fails as a matter of logic. The standard under the  
16 Discovery Order currently in effect is whether Plaintiffs' requests are related to class certification  
17 and/or impose a *de minimis* burden. *See generally* Order re: Plaintiffs' Motion for Administrative  
18 Relief, entered July 20, 2007 ("Discovery Order"). Both standards are met here.

19  
20  
21  
22

---

23 <sup>2</sup> Plaintiffs do, however, have some data that could be used to model the other two damages  
methodologies approved by Judge Hamilton in *DRAM Antitrust* and by numerous other courts – the  
24 "before/after" methodology, which compares prices during the period of anticompetitive conduct to  
prices in effect either prior to or after the anticompetitive conduct period, and the "yardstick"  
25 approach, which compares pricing trends in the subject market to pricing trends in a comparable  
market not affected by anticompetitive conduct. *DRAM Antitrust*, 2006 U.S. Dist. LEXIS 39841, at  
26 \*48. While plaintiffs do not possess all of the transactional data necessary to conduct a final analysis  
27 under either of these alternative approaches (and are not required to at class certification), some of  
this data is available from public sources or has been produced by Apple.

1       **III. THE *DE MINIMIS* BURDEN OF PRODUCTION PROVIDES A SECOND**  
2       **AND INDEPENDENTLY SUFFICIENT BASIS FOR COMPELLING**  
3       **PRODUCTION OF THE UNREDACTED SPREADSHEETS AND THE**  
4       **IPOD DATA THAT DEFENDANT ADMITS IT COMPILES “IN ITS**  
5       **ORDINARY COURSE OF BUSINESS”**

6           Judge Ware’s Discovery Order also allows “the production of documents whose production  
7       would impose only a *de minimis* burden on either party.” *Id.* at 2:1-2. Apple does not dispute that  
8       simply providing unredacted copies of spreadsheets it has already produced in redacted form  
9       imposes anything other than a *de minimis* burden. Thus production of these spreadsheets should be  
10      compelled.

11           Regarding the iPod data, Defendant provided a declaration of one of its employees stating  
12      that “[i]n its ordinary course of business” it “analyzes the financial performance of the iPod on a  
13      worldwide . . . basis” and that producing United States revenue and cost data would take only “two  
14      to three days.” *See Declaration of Charles Lancaster in Support of Apple’s Opposition to Motion to*  
15      *Compel Production of Documents Relating to Class Certification*, filed December 21, 2007  
16      (“Lancaster Decl.”) at 2:8-9.

17           Plaintiffs submit that production requiring only “two to three days” would, in Judge Ware’s  
18      words, “impose only a *de minimis* burden” on Defendant. *Id.*; Discovery Order at 2:1-2. However,  
19      Plaintiffs did not ask for United States data, they simply requested:

20           All Documents necessary to allow the calculation for each quarter since the  
21      introduction of the iPod for each model that iPod has sold, the number of iPods that  
22      have been purchased, Apple’s total revenue from the sale of each iPod model and  
23      Apple’s Cost of Manufacturing and cost of sale for each iPod model.

24           Request No. 19.

25           While production of data broken down by region might be helpful, the words “United States”  
26      appear nowhere in any of Plaintiffs’ requests for production of documents, much less the request at  
27      issue. Given Mr. Lancaster’s admission, that “[i]n its ordinary course of business, Apple analyzes  
28      the financial performance of the iPod on a worldwide rather than a regional basis” (Lancaster Decl.,  
29      at 2:8-9), production of the financial data Plaintiffs request, in the form that it presently exists,  
30      would certainly impose no more than a “a *de minimis* burden” on Defendant. Discovery Order at  
31      2:1-2.

## IV. CONCLUSION

The financial data Plaintiffs seek is discoverable under Judge Ware’s recent Discovery Order both on the basis of its clear relevancy to class certification, and independently on the grounds that it would “impose only a *de minimis* burden” on Defendant. Discovery Order at 2:1-2. For the foregoing reasons, Plaintiffs’ motion to compel should be granted.

DATED: January 2, 2008

Respectfully submitted,

COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
BONNY E. SWEENEY  
GREGORY S. WESTON

s/ BONNY E. SWEENEY  
BONNY E. SWEENEY

655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 619/231-1058  
619/231-7423 (fax)

THE KATRIEL LAW FIRM  
ROY A. KATRIEL  
1101 30th Street, N.W., Suite 500  
Washington, DC 20007  
Telephone: 202/625-4342  
202/330-5593 (fax)

## Co-Lead Counsel for Plaintiffs

BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.  
ANDREW S. FRIEDMAN  
FRANCIS J. BALINT, JR.  
ELAINE A. RYAN  
TODD D. CARPENTER  
2901 N. Central Avenue, Suite 1000  
Phoenix, AZ 85012  
Telephone: 602/274-1100  
602/274-1199 (fax)

BRAUN LAW GROUP, P.C.  
MICHAEL D. BRAUN  
12304 Santa Monica Blvd., Suite 109  
Los Angeles, CA 90025  
Telephone: 310/442-7755  
310/442-7756 (fax)

1 MURRAY, FRANK & SAILER LLP  
2 BRIAN P. MURRAY  
3 JACQUELINE SAILER  
4 275 Madison Avenue, Suite 801  
New York, NY 10016  
Telephone: 212/682-1818  
212/682-1892 (fax)

5 GLANCY BINKOW & GOLDBERG LLP  
6 MICHAEL GOLDBERG  
7 1801 Avenue of the Stars, Suite 311  
Los Angeles, CA 90067  
Telephone: 310/201-9150  
310/201-9160 (fax)

8  
9 Additional Counsel for Plaintiffs

10 S:\CasesSD\Apple Tying\RES00048157.doc

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

2 I hereby certify that on January 2, 2008, I electronically filed the foregoing with the Clerk of  
3 the Court using the CM/ECF system which will send notification of such filing to the e-mail  
4 addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have  
5 mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF  
6 participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 2, 2008.

s/ BONNY E. SWEENEY

BONNY E. SWEENEY  
COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101-3301  
Telephone: 619/231-1058  
619/231-7423 (fax)

E-mail: BonnyS@csgrr.com

## Mailing Information for a Case 5:05-cv-00037-JW

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Francis Joseph Balint , Jr**  
fbalint@bffb.com
- **Michael David Braun**  
service@braunlawgroup.com
- **Andrew S. Friedman**  
rcreech@bffb.com,afriedman@bffb.com
- **Roy A. Katriel**  
rak@katriellaw.com,rk618@aol.com
- **Thomas J. Kennedy**  
tkennedy@murrayfrank.com
- **Caroline Nason Mitchell**  
cnmitchell@jonesday.com,mlandsborough@jonesday.com,ewallace@jonesday.com
- **Robert Allan Mittelstaedt**  
ramittelstaedt@jonesday.com,ybennett@jonesday.com
- **Brian P Murray**  
bmurray@rabinlaw.com
- **Jacqueline Sailer**  
jsailer@murrayfrank.com
- **Adam Richard Sand , Esq**  
invalidaddress@invalidaddress.com
- **John J. Stoia , Jr**  
jstoia@csgrr.com
- **Tracy Strong**  
tstrong@jonesday.com,dharmon@jonesday.com
- **Bonny E. Sweeney**  
bonnys@csgrr.com,tturner@csgrr.com,E\_file\_sd@csgrr.com
- **Gregory Steven Weston**  
gweston@csgrr.com

## Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

**Todd David Carpenter**

Bonnett, Fairbourn, Friedman, & Balint  
2901 N. Central Avenue  
Suite 1000  
Phoenix, AZ 85012

**Elaine A. Ryan**

Bonnett Fairbourn Friedman & Balint, P.C  
2901 N. Central Avenue  
Suite 1000  
Phoenix, AZ 85012